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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 794

SPECTOR FREIGHT SYSTEM, INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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Statutes Cited.

National Labor Relations Act as amended, 61 Stat. 136, Title 29, U. S. C., Section 151, et seq.:	
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To the United States Court of Appeals for the Eighth Circuit.

Spector Freight System, Inc., hereinafter called "Company", prays that a writ of certiorari issue to review a final judgment of the United States Court of Appeals for the Eighth Circuit enforcing an order issued against Petitioner by the National Labor Relations Board.

CITATIONS TO OPINIONS BELOW.

The opinion of the Board (R. 60-68)[1] is reported at 123 NLRB No. 3. The opinion of the Court below is reported at 273 F. 2d 272 (Appendix B, infra, p. 11).

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28, U. S. C., and under Section 10 (f) of the National Labor Relations Act as amended 61 Stat. 136, 29 U. S. C., Sec. 151, et seq.

The opinion and judgment of the Court of Appeals were issued January 5, 1960 (Appendix B, infra, p. 11). Its decree was entered on January 27, 1960 (Appendix C, infra, p. 23).

QUESTIONS PRESENTED.

A member for several years of a union, Local 600, Highway and City Freight Drivers, Dockmen & Helpers, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called "Union," was employed by Company in November. At the time of the employment, Company had in effect a collective bargaining agreement containing a valid union-security clause under Sec. 8 (a) (3) of the National Labor Relations Act as amended, requiring an employee of the Company to be a member of the Union in good standing "on and after 31st day from the date of his employment." When the employee went to work for the Company he

[1] The record consists of the printed Record filed by the National Labor Relations Board in the Court below, references to which will be designated "R. . . .", and the Supplemental Record filed by petitioner Union in the Court below, references to which will be designated "S. R. . . ." (which petitioner Company herein adopts), plus the opinion and decree of that Court.

owed October union dues to the Union and when he failed to pay the November and December dues he was suspended by the Union in accordance with its by-laws, and his discharge from employment by Company was demanded by the Union pursuant to the union-security clauses in the collective bargaining agreement between Union and Company. A Company official received information from the Union's president after an official written request for the employee's discharge by Union was received by Company that the discharge of the employee was based in part by virtue of employee's failure to pay one pre-hire month's union dues, to-wit: the October's dues. The Company had no knowledge of the Union's by-laws requiring that, as a condition precedent to a member's loss of good standing in the Union, a dues delinquency for three months' dues necessary, but acceded to the Union's request for discharge of the employee on the basis of the union-security clause contained in its collective bargaining agreement with the Union. Under these circumstances, the question presented is:

Does a Company, within the purview of Section 8 (a) (1) and Section 8 (3) (B) of the Act, have reasonable grounds for discharging an employee on demand of a Union with whom it has a collective bargaining agreement containing a union-security provision, providing that an employee must be a member in good standing of the Union on and after the 31st day from his date of employment, when it is advised and has knowledge that the employee is not a member in good st[illegible] on the expiration of such 30 day period and has not paid his Union dues for two months from date of his employment, even though it receives information subsequent to the official demand for discharge, but prior to discharge, that the demand for discharge has been brought about by failure of the employee to pay three months' Union dues, one of which is a pre-hire month, when, without knowledge of

Company, a Union by-law makes it a condition precedent to the loss of good standing of a Union member that he be delinquent in dues for three months?

STATUTES INVOLVED.

The statutory provisions involved are Sections 8 (a) (1) and 8 (a) (3) (B) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. 151 et seq., and are reprinted in Appendix A hereof.

STATEMENT.

This case arose out of an unfair labor practice charge filed by the National Labor Relations Board against Union and Company, charging that the Company wrongfully discharged one Paul H. Conrad of the Union on demand for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union, alleged to be a violation, or so far as Company was concerned, of Sections 8 (a) (3) and 8 (a) (1) of the Act (R. 4-7):

A. **The Material Facts**—The Company had a bargaining agreement with respondent Union, effective February 1, 1955 (R. 14), containing a Union security provision (R. 51), covering a period from February 1, 1955 to January 31, 1961, under which Conrad was employed (R. 13; SR. 7). Conrad, a member of the respondent Union since 1950 (R. 27), paid his dues to Union through September (R. 26), but did not pay dues in and for October, November and December, 1957 (SR. 5, 6). He was not employed in October, 1957 (R. 23), but was employed by the Company on November 6, 1957 (R. 49), and remained so until he was discharged by the Company on February 3, 1958, at the Union's request, on the ground that he had failed

to comply with the Union's security provision of its contract with Company (R. 49). On January 31, 1958, the Company received a letter, dated January 30, 1958, from the Union, requesting Conrad's discharge because Conrad had failed to comply with Article II, Section (b) of the Central States Over-the-Road Motor Freight Agreement to which respondent Company was a party (R. 13, 14); this section of said agreement provided, in substance, that all present employees who are not members of the Local Union, and all employees who are hired thereafter, were to become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment (SR. 7). As a result of this letter, the Company discharged Conrad as aforesaid, on February 3, 1958 (R. 49).

The Company had in practice and prior to Conrad's employment deducted Union dues from its employees' pay and remitted same to the Union only on a quarterly basis, in advance, and that under said agreement the Company required Union employees hired after the remittance of quarterly payment of dues to the Union, to make payment of their dues during the remaining portion of their first quarter of employment directly to the Union (R. 8, 9). Conrad was told by the Company that he would have to pay his dues directly to the Union for the months of November and December (R. 33). After Conrad's employment by the Company on November 6, 1957, neither he nor the Company paid his Union dues for the months of November and December, 1957 (SR. 2, 4), but Union dues were remitted to the Union for him on January 2, 1958, to cover the months of January, February and March of 1958 (R. 13).

B. **The Legal Conclusions.** The Board concluded that the Company had violated Sections 8 (a) (3) and (a) (1) of the Act by the discharge of Paul H. Conrad, after

written request of the Union, for failure to pay dues for October, 1957, a month during which he was not employed by the Company, and that Company was fully apprised that the discharge was demanded (by the Union) for that reason (R. 60, 61).

The Court of Appeals held the Board's conclusion wherein the Court concluded that the Company's liability was properly based upon a finding that it had "reasonable grounds" for believing that the Union had requested Conrad's discharge for reasons other than his failure to tender their periodic dues uniformly required, and that its discharge of Conrad constituted a violation of Sections 8 (a) (3), 8 (a) (1), despite the fact that the Court found that there was no proof that the Company was cognizant of the Union's by-law No. 36 (requiring three months' dues delinquencies before a member lost his good standing in the Union), nor that the Company was aware that the request to discharge Conrad was due to his failure to pay the reinstatement fee or that, in fact, that the Company was aware that this fee had been demanded.

REASONS FOR GRANTING THE WRIT.

The Board's finding and conclusion as to Company sustained by the Court of Appeals does violence to and is an unreasonable construction of Section 8 (a) (1) and Section 8 (a) (3) (B) of the Act, particularly the latter section. In substance, the decision of the Board and the Court in holding the Company liable for the discharge of Conrad was on the ground that under said Section 8 (a) (3) (B) the Company had reasonable grounds for believing that the membership of Conrad was being denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union. The sole basis for such a

conclusion by the Board and the Court was based squarely on a stipulation in the record whereby it was agreed that Company discharged Conrad pursuant to the letter from the Union's secretary-treasurer, after William J. Lemon, labor relations director of Company, was told by the Union's president Grogan that Conrad's discharge was required for failure to pay October, November, and December, 1957 dues and the testimony of Mr. Lloyd, an employee of the Company, that he had no reason to believe that the Union was not requesting Conrad's discharge for anything other than nonpayment of delinquent dues for the months of October, November and December.

The conclusion of the Court ignores the fact that on the basis of the knowledge the Company had at the time of the discharge of Conrad, it had every reasonable ground for determining that the request by the Union for the discharge of Conrad from its employment was justified. Under the union-security provision of Company's collective bargaining agreement with the Union, it was clear at the very minimum at the time of Conrad's discharge he had not paid his December, 1957, dues, and that he had been in the Company's employ for over thirty days. This fact was clear from the Company's records as well as by virtue of the information received from the Union. It was, therefore, certainly reasonable for the Company to conclude that the information received from the Union president as to the failure of Conrad to also pay a pre-hire month's dues was merely the recitation of additional dues delinquencies not significant, nor determinative, insofar as the Company was concerned, in the suspension of Conrad. The importance or significance of the failure to pay the pre-hire month's dues by Conrad would have had real meaning to the Company only if it had knowledge of the applicable by-law of the Union which provided that a member had to be delinquent in the payment of dues for three months to lose his good standing, which

in this case included October, November and December, 1957.[2] It is conceded by the Court that the Company did not have such knowledge, nor of any demand for re-instatement fees by Union on Conrad. More succinctly stated, absent a knowledge of the Union by-law, requiring a total of three months' dues delinquencies as a condition precedent for the discharge of a Union member, it was not unreasonable for the Company to conclude that the monthly delinquencies were **several** in nature rather that a **single offense**, and that, if one of the dues delinquencies could, insofar as Company knew, result in the employee's loss of good standing in the Union, then Company had to accede to the Union's request for the discharge of the employee.

The Company is, therefore, placed in an impossible and inequitable situation. It received informal information that three dues violations have resulted in the loss of good standing of its employee in his union, and it is clear that at least **one** of such violations is sufficient for the loss of membership in the Union, on the basis of the knowledge available to the Company, giving the Union the right to request the employee's discharge from Company. The Company, nevertheless, is required to know something that it does not, in fact, know, and that is, that under the Union by-laws all three dues violations were a condition precedent to the employee's loss of good standing in his Union. The misconstruction by the Board and the Court of Section 8 (a) (3) (B), insofar as Company is concerned in this case, makes the Company, chargeable and privy, as a matter of law, to the by-laws and other rules and regulations by which a Union governs its relations with its members, when, as matter of actual fact, it is not

[2] Petitioner Company agrees, however, with petitioner Union's position in its petition that the 30-day grace period does not apply to new employees who are already members of the Union on the date of employment, as was Conrad.

and cannot be. What the Court failed to consider in upholding the decision of the Board with respect to the Company, in light of Company's lack of knowledge as the pertinent Union by-law governing loss of good standing of a member for failure to pay union dues, was the converse of Section 8 (a) (3) (B), to-wit: whether the Company had reasonable grounds for believing that membership was **not** denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

CONCLUSION.

For the reasons noted, it is respectfully submitted that the foregoing petition for certiorari should be granted.

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APPENDIX A.

The pertinent provisions of the Labor-Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Sec. 151 et seq.), are as follows:

"Section 8 (a) Employers Unfair Labor Practices.

"(a) It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7;

* * * * * * * *

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, that nothing in this Act, or in any other statutes of the United States shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later * * *.

"Provided, further, that no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has **reasonable grounds** for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has **reasonable grounds** for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; * * *" (Emphasis supplied).

APPENDIX B.

United States Court of Appeals,
for the Eighth Circuit.

No. 16,291.

National Labor Relations Board,
Petitioner,

vs.

Spector Freight System, Inc., et al.,
Respondents.

On Petition for Enforcement of an Order of the National Labor Relations Board and on Cross-Petitions for Review of Said Order.

[January 5, 1960.]

Before Johnsen, Chief Judge; and Van Oosterhout and Matthes, Circuit Judges.

Matthes, Circuit Judge.

Pursuant to § 10 (e) of the National Labor Relations Act, 29 U. S. C. A. § 160 (e) [hereinafter referred to as "Act"], the National Labor Relations Board [hereinafter called "Board"], petitions for enforcement of its order against respondent Spector Freight System, Inc. [hereinafter called "Company"], and respondent Local 600, Highway & City Freight Drivers, Dockmen & Helpers [hereinafter called "Union"]. The Company and Union have cross-petitioned for review of the Board's order pursuant to

10 (f) of the Act, 29 U. S. C. A., § 160 (f). The Board's decision and order are reported at 123 N. L. R. B. No. 3. See also, CCH N. L. R. B. Decisions, 1958-1959, ¶ 56,088.

The Board's action resulted from charges brought by Paul H. Conrad to the effect that certain acts of respondents, culminating in his discharge by Company, at the request of Union, constituted unfair labor practices in violation of the Act. Union alleged that Conrad's discharge was lawfully demanded pursuant to its union-security agreement with Company, and Company contended that it acted in good faith in discharging Conrad, pursuant to lawful demand made under said security agreement.

The pertinent facts, as found by the trial examiner, and adopted by the Board, are as follows:

Paul Conrad, who had been a member of Union for a number of years, was employed by Company as an over-the-road driver on November 6, 1957. He was unemployed during October. When Conrad was hired by Company he executed a check-off card which authorized Company to deduct $5 from Conrad's pay as dues, and remit that amount to Union on a monthly basis. Conrad did not pay dues directly to Union in November and December, and no dues were deducted from his pay for those two months. On December 31, 1957, in accordance with Union's constitution and bylaws, an entry was made on Conrad's account card, suspending him for nonpayment of dues for three months, the last entry of dues payment having been made in September, 1957. By draft and covering letter of January 2, 1958, Company, in accordance with its quarterly practice, remitted to Union, for Conrad, among other employees, $15 as quarterly dues for the months of January, February and March, 1958. On January 6, Union made three entries on Conrad's account card, each entry showing dues payment of $5; the entries did not allocate the payments to any particular month as did prior entries on the

card. On January 8, John J. Lloyd, Company Supervisor, informed Conrad that an officer of Union wanted to see him, and that Conrad should not go out on a trip until he had cleared with Union. Later that day Conrad had a conference with Patrick M. Neary, secretary-treasurer of Union, at the latter's office, at which time Neary took the position that in accordance with the bylaws, Conrad owed dues at the rate of $6 per month, instead of $5, for either two or three months. Neary further insisted that Conrad also owed a reinstatement fee of $60 because of his suspension for failure to pay dues for October, November and December. Neary informed Conrad that the least Union would accept was $72 a reinstatement fee of $60 plus dues for November and December at the rate of $6 for each month. Conrad took the position that he was not obligated to pay the reinstatement fee and was not liable for dues for October because he was unemployed during that month. At the close of this meeting, Neary informed Lloyd by telephone that Conrad could remain on the job; that there was some discrepancy, but he was certain the matter could be worked out. Conrad returned to the job, but made no further payment to Union.

By letter to the Company dated January 30, 1958, Union requested Conrad's discharge for failure to comply with the union-security provision of Union's contract with Company.[1] Union's president also informed the labor relations director of Company that Conrad's discharge was requested because of his failure to pay dues for October, November and December, 1957. Conrad was discharged on February 3, 1958. Thereafter, and within a few days, Union refunded the $15 to Conrad which was the amount the Company had deducted from his pay and remitted to Union.

[1] This contract required that all employees must become and remain "members in good standing" of Union as a condition of employment.

From the foregoing facts, the Board concluded that Union's insistence upon Conrad's discharge was unlawfully predicated upon his nonpayment of the October pre-hire dues, and that Company "was fully apprised that the discharge was demanded for this reason." Accordingly, the Board concluded that Company and Union had violated §§ 8 (a) (3), 8 (a) (1), and 8 (b) (2), 8 (b) (1) (A), respectively, by discharging Conrad for failure to pay dues for October, 1957, during which time he was not employed by Company.

Additionally, the Board concluded that even if it be assumed that Conrad's discharge was not predicated upon his failure to pay October dues, but because he failed to pay the reinstatement fee of $60, as urged by Union, Conrad's termination of employment was a violation of §§ 8 (b) (1) (A), 8 (b) (2), 8 (a) (3) and 8 (a) (1), this for the reason that the fee which Union sought to exact resulted from computation of dues for a period during which Conrad was under no statutory obligation to pay such dues in order to retain his job. On this issue, the trial examiner found that such demand for the reinstatement fee constituted restraint and coercion by Union, only, in violation of § 8 (b) (1) (A) of the Act. By finding such demand to be a violation of § 8 (a) (3) and § 8 (a) (1), it is apparent that the Board concluded that, by discharging Conrad for non-payment of the reinstatement fee, based unlawfully upon a pre-hire arrearage, the Company also had violated the Act.

In addition, the Board also adopted the trial examiner's finding and conclusion that Union violated § 8 (b) (1) (A) of the Act by threatening Conrad with loss of employment if he did not pay November and December dues at the rate of $6 rather than $5 per month the additional $1 constituting a penalty or fine.

The Board's order now before us, provided that, as to Company, it should cease and desist from encouraging

membership in Union by discharging any of its employees or discriminating in any other manner in regard to their hire or tenure, except as authorized by § 8 (a) (3) of the Act; or from restraining its employees in the exercise of the rights guaranteed in § 7 of the Act.[2] As to Union, the order required it to cease and desist from causing or attempting to cause Company to discriminate against its employees in violation of § 8 (a) (3); from threatening to enforce any provisions of its constitution or bylaws in such a way as to condition employment upon payment of assessments or fines for nonpayment of periodic dues, or to condition employment upon payment of a reinstatement fee predicated upon a pre-hire arrearage, in violation of § 8 (b) (1) (A) of the Act; or to restrain its members in the exercise of rights guaranteed by § 7 of the Act. In addition, the order required that Union take affirmative action by notifying Company that it withdraws objections to Conrad's employment, and by requesting that Company offer him immediate reinstatement; that Company offer reinstatement to Conrad; that Union and Company, jointly and severally, make Conrad whole; and that Company and Union post appropriate notices.

The National Labor Relations Act provides that employers and unions may enter into agreements whereby membership in a union may be required as a condition of continued employment. Section 8 (a) (3). Labor organizations enjoy the right to prescribe their own rules for acquisition or retention of membership. Section 8 (b) (1). However, it is further provided that non-membership or loss of membership, as grounds for dismissal, may only be founded upon failure of the employee to tender "the periodic dues and the initiation fees uniformly required as a condition of membership."[3] As stated by the Supreme

[2] Section 7 of the Act, 29 U. S. C. A., § 157, while guaranteeing employees' rights to organize, bargain collectively, etc., further provides that employees "shall also have the right to refrain from any

Court in **Radio Officers Union v. N. L. R. B.**, 347 U. S. 17, 40, "The policy of the Act is to insulate employees' jobs from their organizational rights."

> "The right to membership lies with the union alone, but the right to a job is surrounded by safeguards which limit a union's acts." **Murphy's Motor Freight, Inc.**, 113 N. L. R. B. 524, 534, **enforced**, 3 Cir., 231 F. 2d 654.

Thus the internal rules of a labor organization, designed to control its members, such as imposition of fines for

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or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment . . ."

Section 8 (a) (3), 29 U. S. C. A., § 158 (a) (3), authorizes employers to enter into agreements whereby membership in a union, within a 30-day period after employment, may be made a condition of such employment, but no discrimination against an employee for non-membership in a labor organization may be justified if the employer "has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Section 8 (b), 29 U. S. C. A., § 158 (b), provides:

"It shall be an unfair labor practice for a labor organization or its agents—

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 [§ 7] of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) . . . or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

It has been held by the Board that, when properly founded, a union may validly demand a reinstatement fee. See *Local 173*, 121 N. L. R. B. 170; *International Association of Machinists*, 120 N. L. R. B. 1223, and compare *N. L. R. B. v. International Ass'n*, 9 Cir., 203 F. 2d 173 (right to re-instatement unlawfully conditioned upon payment of pre-existing fine).

failure to attend meetings, special assessments, and other penalties, not being "periodic dues," may not be enforced by the union by a threat of loss of employment. See **Radio Officers Union v. N. L. R. B.**, 347 U. S. 17 (loss of seniority for late payment of dues; suspension for non-compliance with union's hiring rules); **Westinghouse Electric Corp.**, 96 N. L. R. B. 522, enforced; **N. L. R. B. v. International Ass'n of Machinists**, etc., 9 Cir., 203 F. 2d 173 (fine for dual unionism); **The Electric Auto-Lite Company**, 92 N. L. R. B. 1073, enforced; **N. L. R. B. v. Electric Auto-Lite Company**, 6 Cir., 196 F. 2d 500, cert. denied, 344 U. S. 823 (failure to attend meetings); **N. L. R. B. v. Eclipse Lumber Co.**, 9 Cir., 199 F. 2d 684 (refusal to picket); **The Great Atlantic & Pacific Tea Co.**, 110 N. L. R. B. 918 (dues delinquency); **Union Starch & Refining Co. v. N. L. R. B.**, 7 Cir., 186 F. 2d 1008, cert. denied, 342 U. S. 815 (refusal to take loyalty oath and attend meetings); **N. L. R. B. v. Philadelphia Iron Wks.**, 3 Cir., 211 F. 2d 937 (enforcement of hiring rules).

The Board's finding that Conrad's termination was founded upon an unlawful demand for pre-hire dues, as a condition of employment, has ample support in fact and law. Prior decisions have held that payment of dues or other debts accruing prior to existence of a union-security agreement, or prior to employment, may not be required as a condition to continued employment. Failure to pay "periodic dues" does not go "so far as to make lawful the discharge of an employee for failure to liquidate a debt incurred for union dues before the employment in question began." **National Labor Relations Board v. Murphy's Motor Freight, Inc., et al.**, 3 Cir., 231 F. 2d 654, at p. 655, and cf. **N. L. R. B. v. International Ass'n**, 9 Cir., 203 F. 2d 173 (failure to pay pre-existing fine); **N. L. R. B. v. International Union**, 7 Cir., 194 F. 2d 698, and **Local 140**, etc., 109 N. L. R. B. 326 (loss of good standing as grounds for dismissal unlawfully based upon dues accruing before security agreement).

While Company and Union do not expressly concede that the failure of Conrad to pay dues for October, a pre-hire month, would not constitute a legal basis for terminating his employment, this concession is clearly implicit in their respective briefs. In essence, their position is that there was no substantial evidence to support a finding that Conrad's discharge was occasioned by his failure to pay dues for October, November and December. In so contending, respondents overlook the stipulation they entered into at the hearing, wherein it was agreed that Company discharged Conrad pursuant to the letter from Union's secretary-treasurer, "after William J. Lemon, labor relations director of respondent company, was told by respondent union's president Grogan **that Conrad's discharge was requested for failure to pay October, November and December, 1957, dues.**" Moreover, in so far as Company is concerned, its Mr. Lloyd testified that he had no reason to believe that Union was requesting Conrad's discharge "for anything other than nonpayment of delinquent dues for the months of October, November, and December." In view of the foregoing, and other pertinent facts and circumstances which have been carefully considered, it seems clear to us that the Company's liability was properly based upon a finding that it had "reasonable grounds" for believing that Union had requested Conrad's discharge for reasons other than his failure to tender the periodic dues uniformly required, and that its discharge of Conrad constituted a violation of §§ 8 (a) (3), 8 (a) (1).

We are also of the opinion that **Union** did not have the right under the Act to condition Conrad's continued employment upon payment of the reinstatement fee of $60. In this connection, we observe that § 36 of Union's bylaws provides that "(a)ny member delinquent three (3) months or more must pay a Sixty ($60.00) Dollars reinstatement fee * * *." Thus, it appears that the reinstatement fee

was predicated upon dues delinquency for three months—here, that period had to be October, November and December, meaning that the $60 fee resulted from the inclusion in the delinquency period of a month for which Conrad was under no statutory obligation to pay dues. We cannot sanction this procedure, because obviously it would permit a union to do indirectly what it recognizes it is prohibited from doing directly. As stated by the Board in **Local 140**, etc., 109 N. L. R. B. 326, at p. 328, "In both instances, the employees are penalized for not paying dues at a time when they were legally privileged to refuse to do so without jeopardizing their jobs." But there is no basis for the Board's finding that Union's conduct with respect to the reinstatement fee also constituted a violation by Company of §§ 8 (a) (3) and 8 (a) (1). The record does not demonstrate that Company was requested to discharge Conrad because of his failure to pay the **reinstatement fee**—indeed we find nothing to indicate that Company was aware that this fee had been demanded. Neither is there proof that Company was cognizant of Union's bylaw No. 36. However, this erroneous finding by the Board does not invalidate its order against Company, which finds support on the ground hereinabove discussed.

This brings us to the issue of whether Union violated the Act by threatening Conrad with loss of employment if he did not pay delinquent dues at the rate of $6 rather than $5 per month. The Board insists that the extra $1 demanded for late payment was not a part of the "periodic dues * * * uniformly required as a condition of acquiring or retaining membership," § 8 (b) (2), and that therefore Union could not invoke the sanctions of the union security agreement against Conrad in the event he failed to pay the dues at the increased rate. It is said that the additional $1 imposed upon delinquent members is tantamount to a fine or assessment for failure to pay dues on time, and that such increased payments are intermittently imposed and by their very nature not periodic.

Union presents a two-pronged contention. First, that there was no substantial evidence that it threatened Conrad with loss of employment if he failed to pay dues for November and December. Secondly, that the additional $1 does not constitute an assessment or fine, but as stated in the bylaw, is in reality dues; that the effect of the bylaw is to grant members an option of saving $1 by paying dues before the first of the month. Union argues this issue is settled by **N. L. R. B. v. Bakery & Confectionery Wkrs.**, 3 Cir., 245 F. 2d 211. The first contention is clearly without merit. There was substantial evidence to support the Board's finding that Conrad's job was threatened and placed in jeopardy by Union because he would not accede to its request to pay dues at the increased rate.

It is now firmly settled that payment of assessment, penalties or fines cannot be made a condition of continued employment. Such items do not fall within the category of "periodic dues" within the meaning of the Act, and their imposition restrains and coerces employees in the exercise of their rights under § 7 of the Act [to refrain from any and all union activities except membership required under a union security agreement], contrary to § 8 (b) (1) (a). See cases cited, p. 7.

The Union bylaw fixing the dues provides: "The dues for this Local Union shall be not less than five ($5.00) Dollars per month and shall be paid on or before the first day of the current month. Dues paid after the first of the month shall be six ($6.00) Dollars." The constitution of International Brotherhood of Teamsters, Chauffeurs, etc., with which Union is affiliated, provides with respect to payment of dues: "All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing." In determining the real purpose of the additional $1 required of late paying members only, we look through form

to substance. So viewing the situation, we cannot escape the conclusion that the additional amount is in reality in the nature of a penalty, imposed because of failure to pay during the current month. By fixing the dues to be paid currently at $5 per month Union unquestionably determined that this amount would produce ample operating revenue, so it can scarcely be argued that the $1 is designed to increase revenue required for normal union operations. Further, it is apparent that the additional $1 not being collected monthly as a matter of course, is by its nature not a periodic payment, collected as such in a normal dues structure. This is readily apparent from Conrad's union dues card, an exhibit in the record.

In **N. L. R. B. v. Bakery & Confectionery Wkrs.**, 3 Cir., 245 F. 2d 211, relied upon by Union, the bylaws fixing dues were couched in terms of allowing a discount from the stated monthly dues figure, if payment was made before the last day of the month in which dues were payable. The Third Circuit viewed this structure as affording the member an option to receive a benefit and the member's failure to take advantage of the discount could in no way be deemed as an assessment of a penalty.[4] Inasmuch as the Union bylaw here involved is in our opinion distinguish-

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[4] But see *The Electric Auto-Lite Company*, 92 N. L. R. B. 1073, enforced, *N. L. R. B. v. Electric Auto-Lite Company*, 196 F. 2d 500, where monthly dues were increased from $1.50 to $2, with a provision that members who attended each monthly meeting would be entitled to a 50c exemption. Upon other evidence, the Board concluded "regardless of the means adopted to institute this charge, the necessary and intended effect was to fix a penalty upon those members who did not attend the monthly meetings. We cannot consider such a charge, with the conditions attached, as regular monthly dues. In our opinion, it is nothing other than a *fine*." 92 N. L. R. B. at p. 1074.

It is possible that a "discount" system of fixing dues would be open to abuse, inasmuch as dues could be set at higher figures, with discounts allowed for compliance with various internal rules of the union, thus indirectly accomplishing forceable collection of fines of performance of union duties.

able and is in no way designed to afford optional benefits to its members, it is unnecessary to consider the persuasion of **N. L. R. B. v. Bakery & Confectionery Wkrs.**, etc., supra.

Union's insistence upon payment of dues for November and December, at an increased rate, thereby threatening Conrad with loss of good standing and employment, constituted a violation of § 8 (b) (1) (A) of the Act.

We have conscientiously searched the record in its entirety, according to our responsibility upon review, as outlined by the Supreme Court in **Universal Camera Corp. v. N. L. R. B.**, 340 U. S. 474, 490, and we are satisfied that the findings and conclusions of the Board are supported by substantial evidence, when viewed on the record as a whole, and that its order is proper and entitled to enforcement.

The petitions to set aside the order will be denied and a decree for the enforcement of the order will be entered. It is so ordered.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX C.

(Decree.)

United States Court of Appeals
for the
Eighth Circuit

No. 16291 - - - September Term, 1959.

National Labor Relations Board,

Petitioner,

vs.

Spector Freight System, Inc.; and Local 600, Highway & City Freight Drivers, Dockmen & Helpers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Respondents.

Before: Johnsen, Chief Judge; and Van Oosterhout and Matthes, Circuit Judges.

This cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the aforesaid Respondents, their officers, representatives, agents, successors, and assigns, on March 5, 1959. The Court heard argument of respective counsel on November 20, 1959 and has considered the briefs and transcript of record filed in this cause. On January 5, 1960 the Court, being fully advised in the premises, handed down its decision granting enforcement of the Board's order.

On Consideration Whereof, it is ordered, adjudged and decreed by the United States Court of Appeals for the Eighth Circuit that the said order of the National Labor

Relations Board in said proceeding be enforced, and that Spector Freight System, Inc., its officers, agents, successors, and assigns and Local 600, Highway & City Freight Drivers, Dockmen & Helpers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, successors, and assigns, abide by and perform the directions of the Board in said order contained.

January 27, 1960.